

## **BOARD OF MAYOR AND ALDERMEN**

**September 4, 2007**

**7:30 PM  
Aldermanic Chambers  
City Hall (3<sup>rd</sup> Floor)**

Mayor Guinta called the meeting to order.

The Clerk called the roll. There were fourteen Aldermen present.

Present: Aldermen Roy, Gatsas, Long, Duval, Osborne, Pinard, O’Neil,  
Lopez, Shea, DeVries, Garrity, Smith, Thibault, Forest

Mayor Guinta called upon Frank Thomas to approach the podium.

Frank Thomas, Public Works Director addressed the Board stating I wanted to read to the Board a letter that I had submitted to the Mayor this afternoon it reads:

Dear Mayor Guinta,

I am submitting my resignation as Public Works Director for the City of Manchester due to retirement from City services effective December 31, 2007. I’ve been honored to serve the residents and taxpayers of the City of Manchester for over 35 years. During these 35 years I have seen myself evolve from a young engineer to a mature public works administrator, and at the same time City evolve from an old mill town to a vibrant growing destination city. I have seen significant improvements to our environment, transportation infrastructure, our public facilities and our public/private recreation facilities. The role that public works has played in moving the city forward is a source of deep pride for me especially now that I end my career. I am also extremely proud of the transition of the Highway Department into a true department of public works, which is respected by both the public and private sectors. This transition has been made possible due to the support that I have received over the years from dedicated elected officials and department employees. As I leave I am confident that I leave a superbly qualified management team in place that will continue to provide a high level of services and that will be up to the challenges that lay ahead. I ask that you support them as you have supported me in the past. In closing I want to thank the City of Manchester for giving me the opportunity to have a long enjoyable career filled with both challenges and rewards.

Sincerely,

s/Frank Thomas  
Public Works Director

Mayor Guinta stated earlier today Frank it was on my schedule that Frank Thomas wanted five minutes of my time, and Frank Thomas has never asked for five minutes of my time every time we meet it’s a very long meeting because he runs a very complicated and challenging department so I had an idea of what the meeting was about and we sat down and talked a few minutes about where he is in his life and where he is in his career. I think when we think of municipal employees here in the city there are a lot of people who have long

term service to the city, and Frank is certainly no exception with 35 years moving up the ranks and really doing a tremendous job at each level. But I think the city is going to be different after Frank leaves and I certainly appreciate a four-month notice, so we can do a proper search for his successor. But Frank has been intimately involved in just about every project in the last 35 years in the city. His blood, sweat and tears are part of each and every project, each and every infrastructure improvement project, each vision, each plan for our city. He served with many aldermen, many mayors and is someone that is going to be missed. He certainly served, while I have been Mayor with my support, and my appreciation, and when I was an alderman he was somebody that I always looked to for guidance and vision as to how we should be moving forward because he is a person who does have the vision, who does I think have the best interest at heart for the city, he is somebody who I think never asks for thanks and appreciation, he is always here answering our questions no matter if it is friendly fire or a little bit tougher than that, but he has certainly served this city well and as a result has served our state well, so you have our thanks and gratitude. We thank you for your service.

### **CONSENT AGENDA**

Mayor Guinta advised if you desire to remove any of the following items from the Consent Agenda, please so indicate. If none of the items are to be removed, one motion only will be taken at the conclusion of the presentation.

### **Ratify and Confirm Polls Conducted**

- A.** On August 14, 2007 approving a request from Intown Manchester to allow free parking downtown on Wednesday, September 12, 2007 from 5 PM until 8 PM for their Taste of Downtown Manchester event.  
*(Unanimous vote with the exception of Aldermen Smith and Forest who were unavailable.)*
- C.** On August 28 & 29, 2007 regarding a request of Martin Boldin to attend the Askew Awards Conference in Madison, Wisconsin on September 9-10, 2007 and seeking funds in the amount of \$1,500 for transportation, conference and accommodations.  
*(Aldermen Roy, Long, Duval, Osborne, Pinard, O'Neil, Lopez, Shea, DeVries, Garrity, Smith and Thibault voted nay. Alderman Forest voted yea. Alderman Gatsas was unavailable.)*

### **Accept BMA Minutes**

- D.** Minutes of meetings held on April 9, 2007; April 10, 2007; April 16, 2007 (two meetings); April 17, 2007 (two meetings); May 1, 2007 (two meetings); May 15, 2007 (two meetings); June 4, 2007 (two meetings); and June 5, 2007.

### **Pole Petition – Approve under supervision of the Department of Highways**

- E.** PSNH Pole Petition #11-1167 located on Lake Avenue.

**Sidewalk Petitions (50/50 Program FY2008) – Approve subject to the availability of funding**

- F. Communication from Jay Davini, Public Utilities Coordinator, requesting approval of sidewalk petitions.

**Informational – to be Received and Filed**

- H. Manchester Health Department monthly Report Summary, August 2007.
- I. Minutes of the Mayor’s Utility Coordinating Committee meeting held on July 18, 2007.
- J. Minutes of the MTA Commission meeting held on July 10, 2007 and the Financial and Ridership Reports for June 2007.

**REFERRALS TO COMMITTEES**

**COMMITTEE ON FINANCE**

- K. Resolution:

“Amending the FY2006 & FY2008 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Twenty Thousand Dollars (\$20,000) for the FY2006 CIP 310306 MCRC Basement Retrofitting Project.”

**REPORTS OF COMMITTEES**

**COMMITTEE ON COMMUNITY IMPROVEMENT**

- L. Recommending that the Board authorize expenditure of funds in the amount of \$20,000 for the FY2006 CIP 310306 MCRC Basement Retrofitting Project, and for such purpose a resolution and budget authorizations have been submitted.
- (Unanimous vote via poll conducted on August 28 & 29, 2007.)*

**SPECIAL COMMITTEE ON RIVERFRONT ACTIVITIES  
AND BASEBALL**

- M. Advising that it has accepted the proposed renovation to the left field picnic area by the NH Fisher Cats at Merchants Auto.com Stadium as presented, subject to meeting proper permitting conditions.

**HAVING READ THE CONSENT AGENDA, ON MOTION OF ALDERMAN  
DEVRIES, DULY SECONDED BY ALDERMAN O’NEIL, IT WAS VOTED THAT  
THE CONSENT AGENDA BE APPROVED.**

**Ratify & Confirm Poll**

- B.** On August 27 & 28, 2007 regarding a request of Alderman Gatsas that a special meeting of the Board be held immediately following the Committee on Joint School Buildings meeting on Wednesday, August 29, 2007.  
*(Aldermen Gatsas, Long, Lopez, Shea, and Garrity voted yea. Aldermen Roy, Duval, Osborne, Pinard, O'Neil, Smith, Thibault and Forest voted nay. Alderman DeVries was unavailable.)*

Alderman Gatsas stated he did not mind receiving and filing so long as there was to be a discussion at the Joint School Buildings Committee meeting.

Mayor Guinta stated there would be.

Alderman Gatsas stated and it will be about Gilbaine.

Mayor Guinta stated it would, and legal counsel will be present.

Alderman Gatsas moved to receive and file the communication. Alderman Duval duly seconded the motion. There being none opposed the motion carried.

- G.** Communication from Jay Minkarah, Economic Development Director, relative to a communication from Paul Porter regarding projecting growth needed to prevent increasing fees and/or raising taxes to pay for any mandatory expenditure increases.

Alderman Lopez stated looking at the report in terms of tax base development I want to say it's a long range and speculation of what's going to happen; and the indication here is some things that are in the Master Plan. I would ask the committee under the Economic Development Director that in the future that if he could identify what the Assessors, and the Building Department, actually what's coming on line to increase the tax base as we move forward.

Alderman Lopez moved to receive and file. Alderman Shea seconded the motion.

Alderman Shea asked Mr. Minkarah how JacPac was coming.

Mr. Minkarah stated currently the JacPac project is still in the due diligence process but they are making significant progress. As I understood it from the last I've heard the environmental reviews are almost complete, and Mr. Anagnost had recently met with Planning staff I believe last week to discuss preliminarily the submittal of plans to the Planning Board so I think we are making very good progress with the project.

Alderman Shea asked when he anticipated the resolution for this, in other words when do you feel it will be finalized.

Mr. Minkarah stated at this point we are hoping for spring.

Alderman Gatsas stated he had a question on the northwest industrial park at Hackett Hill. I'm reading here it says that we plan on putting the lots up for sale sometime in the fourth quarter of 07.

Mr. Minkarah responded yes.

Alderman Gatsas asked have we found some way to develop the marketing of these lots so that we get some participation in the ownership of the lots rather than the city just carrying this for the last decade when the highest and most furious real estate market came and left us.

Mr. Minkarah stated the process has been slow in moving forward, but I think it has gained significant steam over the past several months. Last March the Planning board conditionally approved subdivision plan, some of those conditions still need to be met. MHRA's consultants did submit about three weeks ago the final information for the wetlands permitting so we are expecting to see wetlands permitting come through in probably about 45 days from now which is one of the more significant conditions of that approval that are still hanging out there. Highway Department also has to receive and review the road design plans for the on and off site improvements, and with those in place we should be able to be able to market the plans, we are hoping to have those plans recorded before the end of the year. In the interim our staff has met with MHRA staff to talk about marketing those plans and at this point we are developing our strategy, we are in fact looking to sit down with some various brokers or brokerage firms to go over first of all what is a development plan for the project to make sure that that development plan is consistent with the market demands, and then hopefully get a broker on board before the end of the year so we can move forward and market those plans, which we would certainly like to do as aggressively as possible.

Alderman Lopez asked are you speaking the Economic Development Office or are you speaking in conjunction with MHRA.

Mr. Minkarah stated the property is under the management of the Housing and Redevelopment Authority so our office is very happy to work with them, we would like to work with them as closely as possible to make sure that these plans proceed through the permitting process and then most definitely to market them as aggressively as we can.

Alderman Lopez stated I'll ask you the same question I asked you a month ago. You think that project should be in the economic development office so that it can move faster than it has been.

Mr. Minkarah stated I think at this point after meeting with MHRA staff and other staff in the city I do believe the project can proceed as it's currently managed but we would very much like to be active participants in that process and I think if we are active participants in that process we can help it to advance, not just quickly but properly. Should the decision be

made to change how that project is managed and administered then I would say that we would certainly be up to the task, if a decision were to be made to involve us more.

Alderman Lopez stated since you have been the Economic Development Director could any business come to the city of Manchester.

Mr. Minkarah stated I don't think I could specifically identify a business that has moved here because of our specific efforts in attracting them, I can say that we have heard positive responses on a number of fronts. First of all I think some of the projects that we are working with like the northwest business park and like Jac Pac are advancing very much because of our efforts in part. There are many people who are involved in advancing any major projects like that. We have also heard very positive responses on our marketing campaign from a number of different quarters so I think we have every reason to believe that our efforts are paying off and will bear fruit.

Mayor Guinta stated just one clarification because Alderman Lopez asked should the management of the project change, I just want to for informational purposes remind the Board that the Master Plan was completed in 2000, it had not been approved by the Board of Mayor and Aldermen until 2004. And once that was approved it was then sent to MHRA, they started their process once it was provided to them in 2005. I did meet with them a few weeks ago specifically to talk about the project, they do have some issues that they are still working with the state at DES however, I feel far more comfortable about what their vision and plan is and the time period for which they can get the necessary approvals and the funding to complete some of the infrastructure improvements and then the process and plan for sale and development.

Alderman Lopez stated the only comment that I make is that I just want to make sure that somewhere along the line somebody's not holding something up, we need that information to come back to this Board to move things along.

Mayor Guinta stated I would agree.

There being no further discussion, Mayor Guinta called for a vote. The motion carried.

**4.** Mayor Guinta advised he had no nominations to present.

**5. Safety Review Board management representative confirmation:**  
Bruce Thomas (Highway) to fill a vacancy, term to expire July 7, 2010.

On motion of Alderman O'Neil, duly seconded by Alderman Pinard, it was voted to confirm the nomination of Mr. Thomas to the Safety Review Board as presented.

**6. Planning Board Alternate Member confirmation:**

John “Jack” Brady to succeed Michael Landry, term to expire May 1, 2010.

On motion of Alderman Duval, duly seconded by Alderman Roy, it was voted to confirm the nomination of Mr. Brady as an Alternate Member of the Planning Board as presented.

**7. Revolving Loan Fund confirmations:**

Stephen Patterson, Esq. to fill a vacancy, term to expire June 1, 2010; and  
Ovide M. Lamontagne, Esq. to fill a vacancy, term to expire June 1, 2010.

On motion of Alderman Shea, duly seconded by Alderman Duval, it was voted to confirm the nominations of Mr. Patterson and Mr. Lamontagne to the Revolving Loan Fund as presented.

Alderman Lopez stated we had some discussion earlier in reference to another person to be nominated to the Arts Commission would that be appropriate to do at this time?

Mayor Guinta replied it would be.

Alderman Gatsas moved to nominate Georgie (Georgina) Reagan as an Honorary member of the Arts Commission. Alderman Lopez duly seconded the motion. There being none opposed, the motion carried.

On motion of Alderman Thibault, duly seconded by Alderman Shea, it was voted to recess the regular meeting to allow the Committee on Finance to meet.

Mayor Guinta called the meeting back to order.

**OTHER BUSINESS**

**10. A report of the Committee on Finance was presented recommending that Resolution:**

“Amending the FY2006 & FY2008 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Twenty Thousand Dollars (\$20,000) for the FY2006 CIP 310306 MCRC Basement Retrofitting Project.”

ought to pass and be Enrolled.

Alderman Garrity moved to accept, receive and adopt the report of the Committee on Finance. Alderman Long duly seconded the motion. There being none opposed, the motion carried.

11. A report of the Committee on Joint School Buildings was presented advising that the litigation between Manchester P.S. GP< LLC (Gilbane) and the City of Manchester be settled as set forth in the Settlement Agreement and Mutual Releases (enclosed herein) and that the Mayor be authorized to sign the Settlement Agreement and Mutual Releases on behalf of the City, subject to the review and approval of the City Solicitor.

*(School Committee Members Beaudry and Herbert and Aldermen Thibault and Roy voted yea; Alderman Long voted in opposition to and School Committee Member Gelinas was absent.)*

Mayor Guinta stated I assume we want to discuss it.

Alderman Gatsas stated your Honor I think the taxpayers need to know how we're doing this.

Mayor Guinta stated if Mr. Thomas and Mr. Pappas, Mr. Clougherty would please come forward. Frank do you want to give a quick overview of what occurred this afternoon and then we can open it up to questions.

Mr. Frank Thomas, Public Works Director, stated this afternoon we presented to the Joint School Buildings Committee a settlement proposal that we had recommended. The court suggested strongly that we go to non-binding mediation. We did do that during the period June 27<sup>th</sup> and 28<sup>th</sup>. Quite frankly when all of us went to this non-binding mediation didn't hold up much chances of us...both parties...reaching a favorable settlement. Quite frankly nothing substantial occurred until the second day at about six o'clock at night when there was some movement on the part of the other party (Gilbane). At two o'clock that evening, two o'clock in the morning we did reach a tentative settlement. Over the last couple of months the details of that settlement have been hammered out...you've received a copy of that settlement, I believe. Having said that I'd like to turn it over to Tom Pappas our outside legal counsel from Wiggin & Nourie to give you a brief presentation on the settlement.

Attorney Tom Pappas stated we approached settlement discussions looking first globally first at Gilbane's claim and Gilbane's claim which was the total demand in the form of two components. First there was the outstanding contract balance owed. The City bargained for a contract through 27 change orders that equaled roughly \$7.5 million and so at the end of the day when Gilbane completes its work the City agreed to pay them \$97.5 million. To date the City has paid Gilbane a little over \$88 million. So there was approximately \$9.375 million remaining to be paid on the contract. In addition Gilbane had filed claims in court seeking approximately \$10.8 million through various theories essentially saying that Gilbane had done additional work above and beyond the contract and they were entitled to be paid an amount of money for that additional work. So to start mediation Gilbane was essentially looking for \$20 million. The City on its part had essentially three issues at mediation. First, the City had withheld liquidated damages because Gilbane had not met certain milestones and so as part of the contract the city withheld some money. Second, the City had identified some items that they thought were within the scope of the contract that Gilbane should have



performed...Gilbane did not perform those items...the City was looking to have Gilbane either perform those items or be awarded some amount of money for the value of those items and third there were some items that the City identified that thought Gilbane did not perform properly and therefore Gilbane should have either fixed them or pay the value to fix them. As Frank indicated the mediation lasted two full days at the end of which the City agreed first in terms of Gilbane's claims the City's analysis settlement is the City is not agreeing to pay Gilbane anything on their claims and so the focus for the City becomes there is \$9.350 million to be paid on the contract, the City has agreed to pay Gilbane \$7.550 million. As part of that Gilbane has agreed to perform certain identified work and that is spelled out in the settlement agreement. The City will have that work inspected and then certified that it is done properly at which point Gilbane will be paid for the value of that work and that leaves about \$1.8 million remaining on the \$97.5 million the City agreed to pay for "X" amount of work and it's the City's assessment that it can accomplish what it wants to within that \$1.8 million. So at the end of the day the City will pay roughly \$97.5 million and receive a product if you will the project that it bargained for. Those are the highlights of the settlement. I'd be more than happy to answer anybody's questions or proceed as you wish.

Alderman Gatsas in reference to the legal fees as where are legal fees being paid out of?

Mr. Tim Clougherty, Facilities Manager, replied the legal fees are being paid out of the project account.

Alderman Gatsas asked does the bond allow for that?

Mr. Clougherty replied I believe the opinion of the City Solicitor when that question was asked several months ago was yes but I'll defer to Tom Clark.

City Solicitor Clark stated in our opinion it does allow for it, we've conferred with Bond Counsel and they confirm that.

Alderman Gatsas asked can you tell me what the legal fees are?

Mr. Clougherty replied to date our legal fees total roughly \$366,000.

Alderman Gatsas asked is this for just this litigation? And to conclude the project how much more do we expect in legal fees?

Attorney Pappas asked from today forward?

Alderman Gatsas replied yes.

Attorney Pappas replied \$10,000-\$20,000.

Alderman Gatsas asked can somebody explain to me why if we owe Gilbane \$9.3 million and paid them \$88 why they're discounting the \$7.550 or \$1.8 million just because they want to be gratuitous to the City.

Attorney Pappas replied let me tell you why I think Gilbane settled for what they did.

Alderman Gatsas stated somebody needs to tell me if we owe somebody \$97.5 million and we agree that 27 change orders cost that and we've paid them \$88 million why they'd settle for \$7.5 million.

Attorney Pappas stated obviously in their opinion they thought that was a settlement they could live with. I can't tell you Gilbane's rationale because I wasn't in their room for 2.5 days.

Alderman Gatsas stated does it sound reasonable to you. You just told me that the project cost \$97.5 million with 27 change orders. We paid them \$88 million, we owed them \$9.3 million and that's what we agreed to pay them because that's what we owed them...that's what I understood the discussion to be and then how did they accepted \$7.5 million.

Attorney Pappas stated they have certain dynamics that the City doesn't have. They have risks in terms of their claims whether or not they think they're going to prevail in their claims or not prevail in their claims...they have costs to pursue their claims which are substantial which I believe are more substantial than the City's given the firm they retained and what they have done to date. They have pressures in the marketplace in terms of the effect this has had on a very slow market and their business and ability to get more business. There are a lot of reasons why Gilbane would like to resolve this matter that don't directly count the same at the City's and they came to their own business decision based on their own analysis of the value of their claims and the risks going forward and their costs going forward but this is a settlement they can obviously live with.

Alderman Gatsas stated so the total cost would be somewhere around \$88 million or thereabouts...\$88 or \$96 million roughly.

Attorney Pappas stated that's correct.

Alderman Gatsas asked what did we have for contingency in the project?

Mr. Clougherty replied you're talking about contingency in the project prior to entering these settlement agreements.

Alderman Gatsas stated correct.

Mr. Clougherty stated roughly \$600,000...\$580,000.

Alderman Gatsas asked what was it originally?

Mr. Clougherty replied \$5.6 million.

Alderman Gatsas stated which would have taken the project to what total amount.

Mr. Clougherty stated their original contract plus \$5.6 million.

Alderman Gatsas asked what was the total project including or excluding contingency?

Mr. Clougherty stated with the change orders.

Alderman Gatsas stated no without change orders. What was the contract originally without the change orders?

Mr. Clougherty replied the base contract was \$94, 900,200.

Alderman Gatsas stated so including the change orders which we had contingency of \$5.6 which leaves \$600,000 that we've got left so we spent \$5 million in contingencies that tells me the project should have been somewhere around \$99 million. I'm just trying to do simple math on the back of this envelope.

Mr. Clougherty stated there are costs outside of the change orders.

Alderman Gatsas stated let's try this again. The original contract was \$94 million.

Mr. Clougherty interjected \$94.900 million.

Alderman Gatsas stated let's say \$95...let's use round numbers and say it was \$95 million. We had \$5.6 million available for contingency...that means if we ran out the entire project plus the contingency we would have been at \$100.6 million.

Mr. Clougherty stated if we used all of the contingency for construction dollars correct.

Alderman Gatsas stated are you telling me we're using them for legal costs and what we're doing here for the settlement. I'm just trying to get to a base because when there are deals that are done there are deals that are done and we're not seeing the figures in front of us because if I'm at \$100.6 million for an all in project including contingency and I only have \$600,000 left...do you agree that's all we have left in contingency.

Mr. Clougherty stated no.

Alderman Gatsas stated okay that just changed then. What do we have left in contingency?

Mr. Clougherty replied before the settlement agreement there was \$600,000 in contingency.

Alderman Gatsas stated after the settlement agreement.

Mr. Clougherty replied there's nothing. There will be money left at the end of the day but it's no longer being called contingency because we no longer have Gilbane engaged on the construction project.

Alderman Gatsas stated okay now I'm a little lost and maybe somebody else wants to try and get clarification because either we...so how do we pay the amount of money that we paid without having contingency to pay it?

Mayor Guinta replied there's a couple of segments to this agreement. First of all, their claim was for roughly \$20 million. The top portion of this sheet...I believe everybody has it correct...does everybody have this sheet?

Alderman Gatsas asked where did that sheet come from your Honor?

Mayor Guinta stated there is the \$10 million portion of the claim on the top for which they're getting zero and then there are the \$9.3 which is what they are currently owed, the agreement is to pay \$7.5...that's for a number of things...retainage, work that had been completed but disputed and then work that was on-going during this process...that total amount comes to \$9.3...we're paying them \$7.5. So actually we're paying them less than the total amount. The third part is that there is \$1.8 million or \$2.1...\$1.8 million that is now set aside for completion of the work that Gilbane was suppose to do but they have not done and that is going to a new subcontractor or contractor and according to our City employees who are overseeing the project that is a conservative estimate as to what is needed to complete this project at 100%. So that money is no longer considered contingency we're moving to a different contractor and completing that punchlist of items.

Alderman Gatsas stated your Honor the numbers don't add up...then we should have \$5 million laying around somewhere because we had \$100.6 million that we did a project with. We've only spent \$95...where's the other \$5 million? Let me get an answer first...tell me where the other \$5 million is...taxpayers want to know.

Mr. Clougherty stated no ones lost \$5 million.

Alderman Gatsas stated then tell me where the math is...we started with \$100 million, we're only going to settle at \$95 to be totally paid...where's the other \$5 million?

Mr. Clougherty stated we started with more than \$100 million. We started with roughly \$108 million.

Alderman Gatsas stated \$8 million went to bonds, legal fees and everything else on the front end.

Mr. Clougherty stated legal fees, insurance.

Alderman Gatsas interjected and the project had \$100 million left. If you tell me we had started with \$100 and we spent \$95 million to complete a project where's the other \$5 million?

Mr. Clougherty stated we had program management costs as well.

Alderman Gatsas stated Tim this is very simple math...\$100 million, \$95 to complete, \$5 million should be left somewhere.

Mr. Clougherty stated I think you're simplifying this a little bit more.

Alderman Gatsas stated that's what this document is telling me. It says to be paid \$95 million.

Mr. Clougherty stated that document does not reference \$100 million anywhere on it.

Alderman Gatsas stated you gave me the \$100 million to start with.

Mr. Clougherty stated no you came up with the \$100 million on your own by saying the base contract was \$95 and there was \$5 million in contingency...those numbers are not reflected on that sheet.

Alderman Gatsas interjected what does that add up to?

Mr. Clougherty replied I'm pretty sure it's \$100 million.

Alderman Gatsas stated so if we started with \$100 in a bucket, if we started with \$100 and we spent \$95 how much should be left in the bucket?

Mr. Clougherty replied that would be \$5.00 Alderman.

Alderman Gatsas stated thank you...that's the simple way of doing it where's the \$5.00?

Mr. Thomas replied what we're presenting to you on the summary sheet is the settlement that we made with Gilbane. Now if you want a complete accounting of the entire project we will be glad to furnish that to you. There's not \$5 million tucked in our pockets...that \$5 million is accounted for and we will be glad to furnish it to you at the next meeting. What we're here tonight to present to you and what you asked was some details on the Gilbane settlement. The Gilbane settlement is summarized on this sheet and we'll be glad to define the Gilbane settlement forwards, backwards and sideward. Now if you want a complete accounting of the project we will be glad to sit down and furnish that to you at a later time.

Alderman Gatsas stated Frank if somebody tells me that we paid Gilbane \$95 million is that what this document tells me? It says settlement payment.

Mr. Thomas replied this document is saying at the end of the day based on this settlement we are paying Gilbane \$95,852,899.

Alderman Gatsas stated I don't disagree with you and I don't think for one second that somebody's got the money in their pocket because it's much too much money to put in your pocket but my question is if we start with a hundred.

Mr. Thomas stated and we'll be glad to give you that information...do you have any questions on the Gilbane settlement?

Alderman Gatsas replied yeah I do because it doesn't make sense.

Mr. Thomas asked do you have any questions on this document?

Alderman Gatsas replied yes I do. I'm saying to you that if somebody's looking for work that was performed at \$100 million how do we get to \$95?

Mr. Thomas replied Gilbane had a contract with us with change orders for \$97.6, they were paid \$88 million to date, they were owed \$93. We settled, we're paying them an additional \$7.550 million for a final total project of \$95. That's what Gilbane's contract ends up with. Now if you want to find out what happened to the difference between the \$95 and the \$100 or \$106 million or whatever the number was we will be glad to get you that information.

Alderman Gatsas stated either it's there or it's not Frank. How do you show me a cost that we paid...total paid of \$95.

Mayor Guinta asked are there costs/payments that went to someone other than Gilbane?

Mr. Clougherty replied every month we submit an outline of what the costs are for the project to the Joint School Buildings Committee and that totals \$109 million...it has all of the funding sources on the top, all of the expenditures listed right down. This is the financial accounting.

Mayor Guinta stated if that could be furnished to the BMA so any Alderman can go through it and if they have questions at some point.

Alderman Roy stated it's part of the agenda forwarded every month.

Alderman Gatsas stated yes but that agenda showed you that during that course of time we were assuming the payments were being made to Gilbane...some \$98 million.

Mr. Clougherty stated this shows what's expended and what is not expended.

Mayor Guinta stated let me move on to some other Aldermen as people have some questions.

Alderman DeVries stated a couple of questions and I started a conversation with the City Solicitor who was trying to help me understand the release and liability within this contract which seems problematic to me because it appeared to me that we have released Gilbane from all liability whether it's from defect or other. Given past track records of some of our construction projects that's problematic for me because though they haven't occurred during my tenure on the Board I have heard the horror stories about having to go back and fix prior properties. So maybe you can help me feel more comfortable as an Alderman releasing this contractor from workmanship and other liability issues including tort liability.

Attorney Pappas stated the City is providing Gilbane with a general release and Gilbane is providing the city with a general release. Gilbane provides essentially like most contractors warrant their work per year...warranty work. By and large that's...

Alderman DeVries interjected say that again please, I'm sorry.

Attorney Pappas stated the first kind of warranty...when you think about liability and releases the first thing you think about is what's the contractor's warranty. I did this work, how long are you going to stand behind my work.

Alderman DeVries asked how long would that usually be?

Attorney Pappas replied a year. And for the most part that's long run because most of the work has been done well over a year...more than a year has passed for a vast majority of the work. So that warranty doesn't provide the City much. The second warranty you think about in terms of construction is the material warranty from the various product

purchases...those generally are from the manufacturer...those run anywhere from a year to 20 year roofs or whatever you have...those remain in place...those go to whether or not it's a rubber roof membrane somewhere or whether or not it's mechanical systems somewhere...those warranties aren't affected by this, they were in place and as part of this settlement the City gets the benefit of all of those warranties.

Alderman DeVries stated just to help me if I could interrupt before you finish that...workmanship of or the cost of workmanship to correct the warranty...is that carved out by this release or would that still be in place...the contractor being held harmless.

Attorney Pappas stated if it's an item that Gilbane attached it...built that wall and we say that wall now needs to be fixed you released Gilbane from that. So in terms of their workmanship they get a general release...you have released them from their workmanship.

Alderman DeVries stated so we would have to prove product failure.

Attorney Pappas stated that's right...in the first instance that's right. If the product fails and you go after the manufacturer. Now that is a warranty...that is a little different from what you mentioned also in your question in terms of negligence or tort. If the wall falls down that's different...that's a different liability than the wall's not straight, come in and make it plumbing straight. If the wall falls down that's different. If it's a defect known today you have released Gilbane from that but there are others that you have not released...but, let me stick with Gilbane for a minute. If it's a defect known today...if it's a latent defect, it's a defect you're not aware of as of today you have not released Gilbane for latent defects, unknown defects. So essentially what the City did was in terms of workmanship we're going to release them, we're done with them coming back and trying to fix the crooked wall...they've done as much fixing as they're going to do, they're not going to do any better. In terms of known defects, things that are in place we've identified those as part of the settlement as one of the three items I mentioned the City did it's analysis of what they thought were known defects, analyzed the cost to correct those defects...whether or not they needed to be corrected, whether it's a matter of degree because much of this has been in place for a year or two or three and used for that long. So the City made an analysis of what do we think could have been done better, what do we think needs to be corrected, what's it going to cost to make those corrections and how much do we want to keep in the till if you will to make those corrections...that's part of the \$1.8 million...hardware's a good example of that because there's a lot of hardware in City that the City's decided they're going to work on that. So that's a risk analysis the City made as part of the settlement for known defects and as part of that release the City bargained to keep \$1.8 million in the till in order for the City to have control of either fixing or replacing those known defects as part of the analysis the City went through to reach the numbers it did and the third item of latent defects we did not release Gilbane on latent defects so that if there is a latent defect that's not included.



Alderman DeVries stated what about exclusions.

Attorney Pappas stated that's something I'm going to get to in a second. Let me make sure...take that back...I stand corrected...I apologize...my first day back from vacation. Gilbane's subcontractors, engineers, architects and consultants we did not release...those four categories of people and so if the wall falls down and it's because of a latent defect those are the four parties and the insurance carriers that the City would pursue in terms of getting that wall fixed. Now if the wall falls down and hurts somebody that person is going to sue everybody including Gilbane and the City there's no question about that and that's not affected by this. If the wall falls down and anybody besides the City have property damage...not personal injury but property damage then they'll sue everybody. The wall falls down and the City says we need to pay to put that wall up then the City has those four parties to look to for those payments...Gilbane's subcontractors, architects, consultants, engineers and their carriers.

Alderman DeVries stated if there's personal injury.

Attorney Pappas replied if there's personal injury first of all the victim is going to sue everybody including the City and the City will first defend in the sense that it's not our fault and by the way look to those guys not us because they built it, they designed it, they subbed it out and they provided this material. So it's similar to any other lawsuit if the wall falls down...the City owns the wall the City is going to say we weren't negligent, it was whoever built it, whoever designed it, whoever supplied the material.

Alderman DeVries stated it's fascinating to me I'm sure that some of the Aldermen are losing patience. Do you consider this to be one a general release for the contract and do you consider that we have still protected the interests of the City as we needed to.

Attorney Pappas replied definitely yes. I think it's a general release, I do think the City interest is protected. Like I said the primary thing that you negotiated away is you identified what we know to be risks and they made the risk analysis of we can identify it, they can figure out what it is, the only thing we really gave away if you will or negotiated away is those latent defects you know the universe before you can go after...those are four pretty big parties that you go after and so the city has that protection.

Alderman DeVries stated the additional projects...Memorial Field and some of the other...Jewett Street I think, elementary schools had some uses...can you tell me the process...it might be more of a Tim Clougherty question but the process for that to be completed now that it's going to another contractor to be completed.

Mr. Clougherty stated actually Gilbane's been working on the work that's recognized in the agreement that says they will complete it...they were working on prior to the mediation and

they worked in earnest on it after mediation over the past two months. I've personally visited some of those sites and the sound or mediation measures were highly successful in my opinion. I can't say the same about all of the others which is a source of some of the \$1.8 million that we'll be looking at but we feel that they are highly successful. Central High School was another area that was carved out as being a portion that will be completed and I believe that's about 95% complete...we basically just have to punchlist those areas. One thing you mentioned was the Memorial Field...I don't know if we want to get into that right now.

Attorney Pappas stated the settlement agreement provides that for those items of work an engineer will go and test and they'll meet certain specifications before they're deemed acceptable and then the City has to pay. So in addition to sounding good we're going to get some objective standards that they have to meet before the City accepts them and they're paid. There were problems with the Clem Lemire Field...the buildings there and the field itself. Technically the City was attempting to make those part of this litigation because their lawsuit with them would make two lawsuits going at the same time...those are excluded from this so that all of the City's claims with respect to those are preserved and Gilbane does not get released from those and those claims go forward. So all of the claims with respect to Memorial High School athletic fields are preserved and are not part of this settlement.

Alderman DeVries stated one final piece Tim or Frank whoever wants to jump in...the additional \$1.8 million do you think is going to be enough money to resolve everything that is outstanding that Gilbane has been released...you do not believe you'll be coming back to the School Board, Joint Schools or this Board for any additional dollars...is that correct? It's a million-dollar question we hope not.

Mr. Clougherty replied at this point in time we're confident that the \$1.8 million is sufficient...that is the number we are working from, it's a number that's recognized in the agreement and it's also a number after sitting down with our program manager and going through some of the items it's a number I'm comfortable with. Do I have a crystal ball and can I say at this point in time that it's definitely \$1.8 no I don't but based on what we know and the defects that we've discovered we're very confident that that \$1.8 is enough.

Alderman Lopez stated Alderman Long sits on the committee representing the Board of Mayor and Aldermen and he voted in the negative...you now have the floor to explain please.

Alderman Long stated the reason why I voted negative was...there are several reasons. One of them is the liability issue. We're assuming that the contingency money was work that they were owed that contingency...was work completed satisfactory. We don't know that. The other issue was...the biggest issue was the liability issues, which Alderman DeVries mentioned. I don't feel that Gilbane did a proper job so I don't feel that their contract should

be...that they should be awarded the amount of money that we agreed to award them. We're taking on a big liability with that \$1.8 million hopefully that does it but it's a big hopeful. We have a warranty on equipment but as far as warranty on the buildings themselves we're absolving Gilbane from any of that. We're telling them that it's okay. And then we have the \$1.5 million of the Letter of Credit with OCIP...there's no determination whether or not we could use that so that throws another stick in the way with respect to the \$1.8 million. There's \$1.5 million in the Letter of Credit...half of it is supposed to be released in October I believe it was Tim and when we don't know if we can use that for the project construction we haven't had that determination yet.

Mr. Clougherty stated just one correction Alderman. You're correct in saying that the Letter of Credit will be reduced in October by 50%, which will go from \$1.5 to \$750,000. We are confident that that money will go toward the project fund.

Alderman Long stated so that money could go toward the \$1.8 million.

Mr. Clougherty stated and it is going toward the \$1.8 million.

Alderman Long stated we can use that money for construction for that project.

Mr. Clougherty replied yes. Unless Tom, Mr. Clark or Mr. Sanders feels otherwise it's been our understanding all along that \$1.5 million was started up under the project fund and we basically had to escrow it under a provision with our carrier and that's the only reason that the money's tied up. There is nothing that said it was going to be used for something other than construction.

Alderman Long stated it was set aside for the OCIP...now there's another issue...we don't know how many claims we have out there with respect to this OCIP and we're using this \$1.5 for the construction so if there was a claim that came out and we owed \$200,000 where would that come from?

Mr. Clougherty replied right now the Letter of Credit \$1.5 million was a mandate from Liberty Mutual to ensure that their interests were protected relative to the premiums that we had to pay and the loss sensitivity of the policy. I don't know how many worker hours that we went through but it was hundreds of thousands. Right now there are either one or two outstanding claims and we're settling one that's recognized within the financing that we've put together for this agreement. Liberty Mutual's recommendation seven months ago was to put together a reserve of \$21,000 and we've settled two of those claims and our reserve balance is still \$137,000. They haven't recommended that we increase that so based on their recommendations and they've been very, very conservative in their recommendations relative to how much money we should have on-hand. I'm not in the insurance industry but I'm relying on the \$137,000. Another point that needs to be made is that we are saying that

the project completion is roughly \$1.8 million. In roughly October of 2008 when our Letter of Credit comes to maturity once again we're confident and hopeful that any outstanding claims will be settled by that point in time. If that's the case then Liberty should be releasing the balance 50% of the \$1.5 million Letter of Credit which is \$750,000 that would be money on-hand that would go to the City.

Alderman Long stated the \$750,000 that's staying in there we could use that money for the claims that are current right now.

Mr. Clougherty stated I believe you could use it for anything within the confines of the project.

Alderman Long stated insurance wise.

Mr. Clougherty stated insurance wise, construction wise, program management wise, change orders...anything's that customary in the project.

Alderman Long stated that's the second half of the...

Mr. Clougherty interjected that's the second half of the LOC (Letter of Credit).

Alderman Long stated that second half is due us in October 2008.

Mr. Clougherty stated again I can't make a promise as to what Liberty's going to do, they really held our feet to the fire keeping the \$1.5 million this long so I'm a little bit hesitant that it's October of '08 but that's currently when the letter expires. The Letter of Credit was initially issued for I think it was \$1.55 million for a \$95 million project. We executed \$2.7 million in change orders, our contract was \$97.7 million. Liberty was mandating a \$1.5 million Letter of Credit. The project's 95% complete according to our spreadsheets and the documentation that we're giving to Liberty Mutual they're still demanding that \$1.5 million Letter of Credit. You can see where I'm talking about their conservatism.

Alderman Long stated with the claims that we paid and the general liability and the Worker's Comp that wasn't in your numbers that you...there are total general liability claims...for general liability and Worker's Comp.

Mr. Clougherty stated that's correct.

Alderman Long asked what have we paid in general liability and Worker's Comp?

Mayor Guinta stated I assume you don't have that at your fingertips.

Alderman Long stated you're adding up numbers and you're not giving us the total number...that would be added in that number.

Mr. Clougherty stated that's all within the \$108 million that Alderman Gatsas was questioning earlier...all those are costs that get rolled into the project as well.

Alderman Long stated as well as the \$1.5.

Mr. Clougherty stated the \$1.5 Letter of Credit...it's not really a cost it's merely money that are escrowed.

Alderman Long stated so that's not part of the \$109 million.

Mr. Clougherty stated it is part of it but it's money that we can't really use until it's released.

Alderman Long stated just to answer Alderman Lopez's inquiry of why I voted no. It was the liability issue, it was the performance of Gilbane that I don't feel justifies this payment...those were my own personal issues.

Alderman Lopez stated unfortunately we have the Joint Committee and under state law they have the authority to spend the money that is allocated. I think Alderman Gatsas had very good questions and I think Frank Thomas spent money on other things over a period of time in addition to the settlement someplace along the line and I think mathematically we could get those just like we do on the Riverfront Committee. I did have a question for the attorney. If by chance this project does go over the allocation and they have to come back to the Board of Mayor and Aldermen for more money than we allocated would this have been a good deal?

Attorney Pappas relied I think in settling the claims this is a good deal. If for some unforeseen reason that the \$1.8 is insufficient to deal with what the City thinks it needs to do now I'm not sure that would affect the analysis of what are the claims and what's a reasonable amount to settle those claims...it's still a reasonable amount to settle for claims it's just that apparently the assumption of your question is something happens and suddenly the \$1.8 is no longer a valid number. Well nobody knows that sitting here today and a lot of things could happen in the future. What you know today this is a good deal.

Alderman Lopez asked did you analyze all the aspects before you recommended settlement? Did you analyze all of the aspects and what needs to be done of the whole project before you made a settlement?

Attorney Pappas replied yes and I will tell you that in terms of what needs to be done the City staff did extensive analysis in terms of what they identified in terms of work that they

don't think is done yet, identified in terms of work that is affected, what it would cost to fix that work defective, what it would cost to do things that they think need to be done and they ran through an analysis and they ran through that analysis not just in terms of mediation...they did it on an on-going basis...on a regular basis when we would meet with them we would start out with how much money's left in the project, what's done to date, what are the claims, we are we thinking Gilbane should have done and didn't do, what do we think Gilbane did that should be corrected and what's it going to cost to do those things? Numerous months that led up to mediation and so they go to mediation and they had a pretty good idea of where they needed to be in order to make a reasonable settlement and they folded that into two days and as Frank said there was no significant movement until very late in the second day because these folks just simply said we're just not going to move and we're not going to move and not going to move because they felt comfortable they knew where they needed to be in terms of completing the project that you bargained for some three or four years ago. So they feel comfortable and I had to refer to them in terms of \$1.8 being sufficient because I'm a lawyer, not a contractor but I can tell you that not just at mediation but on an on-going basis for many months leading up to mediation.

Alderman Gatsas stated can you tell me...some of the work that was done was it done on other schools that were part of this scope or not part of this scope in other words changing roofs at schools?

Mr. Clougherty stated I don't really understand your question.

Alderman Gatsas stated my question is the money that was allocated...the \$109 million...on the original scope of work was every school included in that original scope of work or was some work done on schools that were not part of the original scope?

Mr. Clougherty stated the first part of your question there was an "or"...there are 21 schools that were contemplated to be included in the program out of 22 schools in Manchester...21 were touched...the 22<sup>nd</sup> school was not touched.

Alderman Gatsas stated so the \$109 million went to those 21 schools.

Mr. Clougherty stated that's correct.

Alderman Gatsas stated the Letter of Credit was based on the \$109 million.

Mr. Clougherty stated honestly I don't know what Liberty would base the Letter of Credit on I would think it would be the construction value, the estimated number of work hours things like that.

Alderman Gatsas stated no...the Letter of Credit was based on this one project of \$109 million.

Mr. Clougherty stated no the Letter of Credit was based on the premiums that we were paying and the loss sensitivity of our insurance program.

Alderman Gatsas stated I understand the OCIP program so I understand what it was going towards and I understand that this Board voted for \$1.5 million worth of credit to make sure there was enough to take care of the OCIP program. So my question to you is...I guess it's not to you because the RSA's are very clear on it...RSA 33 says that no funds that you can change the allocation of those funds in a bond unless you come back to this Board for a two-thirds vote to move them...that's the RSA I'm not sure if it's 33 or 32 because I know that Solicitor Clark and I had this discussion about three years ago and what you needed to do to change money in various bonds. Did you change money to a different bonded project you need the approval of this Board by two-thirds to do that. So to touch that \$1.5 million without this Board's approval has nothing to do with the ability for the Joint Buildings to do anything with that \$1.5...that \$1.5 must come back to this Board for any kind of a vote but nobody's explained to me and Mr. Pappas if you can get people to discount for work that's done from \$9.3 to \$7.5 we should hire you every day on every project because I still can't figure out if we paid them \$88 and we owed them \$97 how we got in at \$7.5 when it was money that we owed and I'm still waiting for that accounting because certainly if we've asked the Baseball fund to be audited then probably this looks like it needs an audit too because \$5 million is an awful lot more than \$1.3.

Mayor Guinta stated that it's been stated that full accounting will be supplied to the Board of Mayor and Aldermen. Are there any other questions regarding the settlement?

Alderman O'Neil stated I just have a problem with sitting here and leaving an impression that there's \$5 million hidden somewhere.

Mayor Guinta stated there isn't.

Alderman O'Neil stated I think that's wrong for that statement to be made. I'm sure they can account for every penny and it leaves the wrong impression with the public that they're hiding something and they're absolutely not and maybe they don't have all of the information to present it factually tonight.

Mayor Guinta stated the information that they are presenting is solely about the agreement between Gilbane and the City.

Alderman O'Neil stated keeping going back to they're hiding \$5 million I think is wrong.

Alderman Gatsas stated I don't think that anybody make that comment, Alderman. What I said was...

Alderman O'Neil interjected Alderman that's what you said you said at least twice.

Alderman Gatsas stated Alderman from the documentation if you can find the \$5 million from the \$100 million then tell me where it is. I'm just going by the numbers they've given me this evening.

Mayor Guinta interjected...gentlemen, gentlemen...a full accounting will be provided to this Board that's not part of the original agenda item this evening. This is solely about the agreement between the City and Gilbane and as I said earlier the \$20 million claim...half of it...the top portion, the \$10 million is zero...we're at \$9.3, we're paying \$7.5...this is very simple math. We are actually paying less than what we owe them and what we owe them is based on three things: retainage, money that has been spent to date and unpaid because of the claim and then the third item is work that was on-going during this process...that's what we're paying them for...the amount that is owed is \$9.3, we're paying them \$7.5. So we could certainly argue about some points that Alderman Long brought up about are they entitled to the \$7.5 but are they entitled to the \$7.5 but that has been hashed out at the committee level. I'm sure others share Alderman Long's concern but the fact of the matter is this is certainly as Alderman Gatsas said a reduction of what is owed to them to this point. So if the Alderman is correct a full accounting should be presented to every Alderman for their review and if they have follow-up questions at a later time that can be...those specific questions could be addressed. Is there a motion on the floor?

Alderman Roy moved to accept, receive and adopt the report of the Committee on Joint School Buildings. Alderman Duval duly seconded the motion. The motion carried with Aldermen Gatsas, Long and DeVries duly recorded in opposition.

Alderman Lopez stated it's the joint committee...it's under state law so I don't even.

Mayor Guinta stated the vote is just to accept the report from the committee or not to accept the report. But you are correct this Board...it's under RSA according to the state statutes the Joint Committee has the authority and is the committee that is charged with this. They're just voting on to not accept the report so that would be Alderman DeVries, Alderman Gatsas and Alderman Long.

A second report of the Committee on Joint School Buildings was presented advising that it has authorized the Department of Highways Facilities Division to expend up to \$1.8 million to correct deficiencies associated with the Design/Build project.  
*(School Committee Members Beaudry and Herbert and Aldermen Thibault, Roy and Long voted yea; and School Committee Member Gelinis was absent.)*



Alderman Thibault moved to accept, receive and adopt the second report of the Committee on Joint School Buildings. Alderman Roy duly seconded the motion.

Mayor Guinta stated where is it coming from? There's \$1.8 million left roughly in the bond correct.

Alderman Gatsas asked how much is left in the bond?

Mr. Clougherty replied as of 07/31.

Alderman Gatsas stated that was the cash balance that was left...without retainage held or is that including retainage held.

Mr. Clougherty stated including retainage held.

Alderman Gatsas asked what's the number again.

Mayor Guinta stated it's about \$2.2 million.

Mayor Guinta called for a vote on the motion to accept the second report of the committee. The motion carried with Alderman Gatsas duly recorded in opposition.

- 12.** A report of the Committee on Public Safety, Health and Traffic was presented recommending that ordinance amendment relating to dog fouling penalties ought to pass and layover.

Alderman Osborne moved to accept the report of the Committee on Public Safety.

Alderman Roy duly seconded the motion.

Alderman DeVries asked what is the amendment?

Deputy Clerk Normand replied it was distributed this evening for fines.

Mayor Guinta stated 1<sup>st</sup> offense \$100, 2<sup>nd</sup> offense \$200 and the 3<sup>rd</sup> offense a court appearance. Do you know what they are currently?

Deputy Clerk Normand replied \$25.00 is the first offense, \$50.00 the 2<sup>nd</sup> offense and a court appearance the third offense.

Mayor Guinta stated so it's being increased \$25.00 to \$50.00 for the 1<sup>st</sup> offense, the 2<sup>nd</sup> offense \$50.00 to \$200.00.

Alderman DeVries stated I already know the answer but the dog ban that had been proposed was defeated this afternoon at Public Safety is that correct.

Deputy Clerk Normand stated it was defeated tonight. I believe the Solicitor's office is going to come back.

Alderman DeVries stated just clarifying for the people that might be watching at home because that was a point of contention for many. Thank you.

Mayor Guinta called for a vote on the motion. There being none opposed, the motion carried.

A second report of the Committee on Public Safety, Health and Traffic was presented recommending that a proposed street renaming of a portion of Cedar and Willow Streets to Harry Theo Lane be approved.

*(Unanimous vote)*

Alderman Long moved to accept, receive and adopt the second report of the Committee on Public Safety. Alderman Osborne duly seconded the motion. The motion carried with Alderman Forest duly recorded as abstaining.

A third report of the Committee on Public Safety, Health and Traffic was presented recommending that a request of the Parking Manager, on behalf of the Police Department, for the issuance of parking permits to volunteers working at the Police station to be used at 10-hour meters free of charge while on duty at the Police station be granted and approved.

*(Unanimous vote)*

Alderman O'Neil moved to accept, receive and adopt the third report of the Committee on Public Safety. Alderman Garrity duly seconded the motion.

Alderman Lopez in reference to the 10-hour meter free of charge stated that's while they're working at the Police Department only, is that correct? How is that going to be?

Deputy Clerk Normand replied that is correct. I believe they will have a placard to place in their vehicle. There's a copy of one attached to the report.

Alderman Lopez stated that's not my question...my question is are they going to be working at the Police station and turn that in when they're not working there or are they going to have that all the time? How's the office going to know that they're working there.

Deputy Clerk Normand replied I guess the Chief would have to answer that question.

Alderman Lopez stated they have a card in the window but that doesn't necessarily mean that they'll be working at the Police station.

Mayor Guinta stated for a volunteer at the Police station I think we can trust them.

Alderman Lopez stated we have so many signs out there we don't know who has the signs.

Mayor Guinta stated should they turn them in after their volunteer work is done or what.

Chief Jaskolka stated I think we're going to trust them to just do it while their at the station they're volunteering and they do a lot of great work and I think it's a well-deserved bonus.

Mayor Guinta called for a vote on the motion. There being none opposed, the motion carried.

A fourth report of the Committee on Public Safety, Health and Traffic was presented recommending that regulations governing standing, stopping, parking and operations of vehicles be adopted and put into effect when duly advertised and posted.

*(Unanimous vote with the exception of Alderman O'Neil who was opposed to 4-Way Stop Signs.)*

Alderman Osborne moved to accept, receive and adopt the fourth report of the Committee on Public Safety. Alderman Pinard duly seconded the motion. The motion carried with Aldermen O'Neil and Forest being duly recorded in opposition to the 3-Way and 4-Way Stop Signs.

A fifth report of the Committee on Public Safety, Health and Traffic was presented recommending that a request of Gregory Barrett, Kas-Bar Realty organizer and resident of HiDi for the closure of West Merrimack Street from Canal Street east to 65 West Merrimack Street from 9 AM till 5 PM on Saturday, September 8, 2007, be granted and approved subject to the review and approval of the appropriate City departments.

*(Unanimous vote)*

Alderman Roy moved to accept, receive and adopt the fifth report of the Committee on Public Safety. Alderman Long duly seconded the motion.

Mayor Guinta asked is notification sent to residents or how do they know their street's going to be closed?

Deputy Clerk Normand replied I know the initial request was sent to the Police Department. I believe the Traffic Division of the Police Department talks to the neighbors in the area affected in that area. Typically that's what happens on a street closure.

Mayor Guinta asked is it safe to assume that was done?

Alderman Osborne stated I asked Police and Fire at the committee meeting and they gave me a thumbs up so I presume everything's okay.

Mayor Guinta called for a vote on the motion. There being none opposed, the motion carried.

**13.** A report of the Special Committee on Riverfront Activities and Baseball was presented recommending that based on the plan as previously presented by Line Drive Lofts, LLC for the Diamond View Condominiums at 2 Line Drive the City will not be granting items as identified by the Committee as follows:

- 1) air rights for balconies that extend into City property;
- 2) construction easement for staging construction on City property (namely Line Drive and/or South Commercial Street and the Riverwalk;
- 3) permission from the City to block the Riverwalk and the boat ramp for construction staging during construction;
- 4) permanent “resident” parking spots along nearby City streets (So. Commercial, Line Drive handicapped spots) or lease of other City property for additional parking;
- 5) permission to use City property for shoring during excavation and to station construction equipment for excavation and pile driving;
- 6) permission to have development infrastructure (lighting, HVAC equipment) permanently located on City property;
- 7) permission to have plantings and other landscaping permanently located on City property;
- 8) permission for all repair and delivery trucks for the development to permanently be allowed to park on City property;
- 9) permission for all exterior repairs and upkeep to occur on City property (since building boundaries go to edge of lot lines, any repair people would be on City land); and
- 10) assurance that pile driving within a few feet of the stadium structure would not damage the City-owned stadium or retaining walls.

(Unanimous vote with the exception of Alderman Gatsas who was opposed.)

Alderman DeVries moved to accept, receive and adopt the report of the Special Committee on Riverfront Activities and Baseball. Alderman Lopez duly seconded the motion.

Alderman O’Neil stated I didn’t sit through the committee meeting but maybe a member of the Committee could tell me...who prepared the 10 items?

Alderman DeVries stated this is a list that was put together based on the July 12<sup>th</sup> Planning Board meeting. The Planning Board requested that these specific items...anything that was needed for approval by the Board of Mayor and Aldermen be taken care of by the developer before they came back before them in July and these are the items identified at the Planning Board that needed Board of Mayor and Aldermen approval.

Alderman O’Neil stated I wish Mr. Solomon would buy the property. I’ve never seen anything like this.

Alderman DeVries stated I think that the developer agreed with the list at the meeting this afternoon...they concurred that these were the items they needed approval of and this is just based on the plan that is before us today. If a new plan comes forward it’s not applicable.

Alderman Gatsas stated I voted against this proposal only for the fact that this Board has already taken a position that they're not in favor of the project going there but I don't think that we as a Board should be singling out 10 items that we won't accept on Diamond View Condominiums and if somebody comes before us six months from now with a different project that says permission from the City to block the Riverwalk and boat ramp for construction staging during construction maybe the City's going to say yeah we like the project and we're going to allow that and I just think that we may be opening up ourselves to somebody saying hey wait a minute you wouldn't let us do it why are you letting somebody else do it. I don't think that we should be voting on these 10 items. I think the Board has taken a very clear position on what we think of the project, I think we should leave it stand at that but I don't think that we should be listening to anything as items that this Board should be either considering, not considering because that certainly is something that's going to sit out there for the person that owns that property now saying okay what do you expect me to do here. I think it opens up the City to some liability that there's no reason for us to take this vote and put ourselves in any position of liability. I think that we've taken a position and we ought to just leave it alone.

Mayor Guinta stated I think typically you would be right Alderman the difference here being this is a City-owned property.

Alderman Gatsas stated this is not a City-owned property, your Honor.

Mayor Guinta stated as an abutter.

Alderman Gatsas stated fine...we can't tell an owner what he can and what he can't do or what we won't allow. I don't think that's a proper position for this City to be so I'll make a motion that we receive and file it.

Mayor Guinta stated there's a motion on the floor and I know there's some people that want to speak...let me go to Alderman Roy.

Alderman Roy stated just for clarification this is just a report of the committee. The committee has taken their vote, the vote stands, I'm on that committee, I had a vote earlier today, people in attendance were able to speak but this is just accepting a report of a committee. There's no vote by the full Board to reinforce this or reiterate it, it just accepting a report of the committee. We all know what's been going on. Most of us were there at the meeting let's move our agenda along.

Alderman Lopez stated just a couple of comments your Honor. This just reaffirms our original position of the plan that was presented. It was unanimous in committee at that time and the Board of Mayor and Aldermen approved the committee's recommendation before on this particular project. As I stated at the committee there is nothing to prevent as the

developer has so stated in the minutes they are going to look at all of these items...doesn't mean that they cannot come back with something new and say we only need two items out of these 10...would you reconsider. So they have that option to do that and third I think Attorney Clark about holding other people with these 10 items could you comment on that. You made some comment that we couldn't do that before but clarify what I'm trying to say here is in reference to what Alderman Gatsas is saying that this would apply to somebody else.

City Solicitor Clark stated that I said at the committee meeting all you're doing here is...if you wish to do is...is to send a message to the Planning Board that you don't like this project and you don't want to grant these items. That wouldn't bind you for future items or future projects. Each project has to be evaluated on its own facts.

Alderman DeVries stated I think it's important for us to keep in mind that the Planning Board is looking for direction from us to clarify why we took our previous vote. We were here not too long ago sending a vote and I don't recall the numbers but it was significant saying that we were in opposition to this project. This is the same reason that Mayor Guinta stood before both the Zoning and the Planning Boards in opposition to this project. We just need to clarify for them the problems with the specific plan that they brought to the Planning Board and they brought to us. If they are going to change that plan so that they no longer obstruct our Fire Department's emergency access to the Merrimack River. If they are going to change the plan they no longer have the balconies that are overhanging the pedestrian traffic for the ballpark, if they make those sorts of changes they don't have to come back to us for any kind of release. It's only when they are looking for these specific items that we have issue with the plan. They modify the plan with the Planning Board these requests or these comments go away. It's a whole new approval process. They either don't need to come to us at all or they come back to us with say we've eliminated most of these we have one or two minor things...not the major things that the Mayor went before the Planning Board and the Zoning Board in opposition to but minor things and I think this Board might feel differently at that point in time. Thank you, your Honor.

Alderman O'Neil stated I don't know I'm lost for words I guess. If we're going to start taking positions as abutters on projects as detailed as this...air rights...within the past two years we've approved air rights for a pedestrian walkway at CMC and now we're all of a sudden going to deny air rights. We probably have granted other air rights I don't want to go through each one of these but we might as well say send Jay Minkarah home because if this is the way we're going to start treating economic development in this City we're in for a long, long few years. This is bad for the City of Manchester folks, bad. I'm going to request a roll call on that, your Honor.

Roll call vote was taken. Aldermen O’Neil, Garrity, Forest, Gatsas, Long, Osborne and Pinard voted nay. Aldermen Lopez, Shea, DeVries, Smith, Thibault, Roy and Duval voted yea. Mayor Guinta voted yea. The motion carried.

- 14.** Communication from Alderman Osborne seeking the Board’s approval in ordering a non-binding referendum question to be placed on the November 2007 General Municipal Election ballot to be worded as follows:  
“Are you opposed to having a halfway house for federal prisoners located in the City of Manchester?”

Alderman Osborne moved to send the question to the November 2007 General Municipal Election ballot. Alderman Pinard duly seconded the motion.

Alderman Forest stated the question I have with this referendum mainly because I believe that I’m not sure where it’s at right now there’s litigation on this already isn’t there from I believe in either Supreme or Superior Court.

Mayor Guinta stated it went to Supreme and went back down to Superior and an order was just issued. This question is a non-binding question as I understand it though so it doesn’t impact the judicial side of that issue.

Alderman O’Neil asked what are we hoping to do by this? We have no say in this in my opinion and I think we’re misleading the public by allowing them to vote on something that they have no say and we have no say on and I think that’s just wrong.

Alderman Osborne stated your Honor I mentioned this from the beginning.

Mayor Guinta stated let me go to Alderman Gatsas and then Alderman Osborne because I know Alderman Gatsas had a question.

Alderman Gatsas asked can the Clerk tell me how many non-binding questions we have on the ballot already?

Deputy Clerk Normand replied I believe there’s two questions currently.

Alderman Gatsas asked are they both non-binding?

Mayor Guinta interjected one’s on the Airport and one’s on auto insurance.

Deputy Clerk Normand stated correct.

Alderman Gatsas stated I think it was clear that this Board took a vote and I think it was unanimous about halfway houses in Manchester so I would think that we are...everyone of

us is listening to our constituents wishes by the votes that we take here so we've already...ones taken a vote saying we don't want it on Elm Street. I would think that if this didn't pass at 95% or 98% that's still not going to stop it and I think that we're here taking the votes everyday if the constituents see us voting the wrong way they have an opportunity in a few short months to change the process. So I don't know what this does as a non-binding referendum question because my bet is that 97% of the people in Manchester are going to say we don't want halfway houses in Manchester. I don't know what it costs to put a non-binding question on the ballot. Is there a cost associated with it?

Deputy Clerk Normand replied yes there's a cost for the printing.

Alderman Osborne stated I stated from the beginning I know we don't have any jurisdiction on what happens, I know it's federal government but mainly I think when something large like this I think it's nice when the federal government can hear the people talk or speak except just 14 Aldermen up here and of course the Mayor. I think we don't have all the power, we don't have all the knowledge or anything else. I guess we can guess at what the percentage would be out there I'm sure it probably would be a high percentage but at least it gives them a chance to go out there and vote with something that they feel very strongly about. I think we should give these people a chance to vote. I know it's non-binding but still it makes a person feel better to vote for something or not something that they want in the City. So this is why I'm putting that on there. Again like my automobile insurance it's almost like a little power behind the bullet that's all. It's just let the rest of the government see how the people feel about things even though they think it's 95%.

Alderman O'Neil stated number one I don't think it was a unanimous vote. I think there were at least three Aldermen who voted against taking the position that the City did. Secondly, I just think this is misleading it's ingenuous to the voters. This isn't going to affect a single thing regarding this. The court's either going to say it's coming here or it's not and I think it's wrong to get the public stirred up about this that their vote is actually going to have some say.

Mayor Guinta interjected however wait a minute.

Alderman O'Neil asked can I finish?

Mayor Guinta replied sure.

Alderman O'Neil stated I lost my thought...it's probably a good thing to interrupt me. The point is this vote is not going to make...the court's either going to say...don't get any thoughts about doing it again...the court's going to say whether or not this happens and if it does happen we're not going to have any choice where it goes, we've taken ourselves out of trying to work with them on this. So that's why we're misleading the public on this issue.



Mayor Guinta stated one point of clarification I guess I would have is under the Equal Protection Clause which is one of the issues that was addressed at Superior Court aren't there different levels of the test for different classes of people and wouldn't part of the test at least be in part addressed what the public has to say about it.

City Solicitor Clark stated there are different levels of protection...there are very narrowly defined as we've discussed I don't think the courts are going to look to the public to define those levels no...I think they're defined by statute and law.

Alderman O'Neil stated we have halfway houses in the City I don't remember in my 16 years on and off here that we have ever taken a vote on whether or not approval to be sited in the City of Manchester.

Alderman Osborne interjected maybe it's time we do, Sir. We have halfway houses out there now maybe we have enough of them so if the people speak maybe some may be listening...it's not misleading, Sir.

Mayor Guinta stated Aldermen we have a couple of people who would like to speak.

Alderman Shea stated I don't want people to think that there is concern about a halfway house only on Elm Street. As we recall there was a move to have a halfway house at 315 Somerville Street and many of the residents in that area along with the Aldermen participated before the Zoning Board and indicated to them that they preferred not to have that located there because of problems that the woman who testified this evening indicated namely children, busing, etc. So I don't want the City to feel that because there is opposition to an Elm Street halfway house there is very serious opposition to a halfway house on Somerville Street and basically I think that people have a right to participate in an open forum and hearing before the Zoning Board and I think that presents a very I would say accurate picture of what their thinking might be concerning the location of a halfway house within the neighborhoods where they reside so I don't really think that this would have as much clout as I would say active participation from residents who are directly impacted would have.

Alderman DeVries asked do you happen to know the resolution of the proposal with the Town of Goffstown to locate on the county lands. I thought that this proposal had actually moved to Goffstown were they successful.

Mayor Guinta stated once it was denied by the Board of Mayor and Aldermen here...there would a couple of tracks going...it was going to the Supreme Court, they also had a proposal moving forward in Goffstown I believe near the prison and if my memory serves me correctly the Selectmen opposed it and they came back to Manchester.

Alderman DeVries stated I'm looking for clarification because I'm as befuddled as many others because we heard this when we took our prior votes. Nashua somehow successfully as a government body blocked the halfway proposal and we had this in testimony from the individual's that were before us before we took the court to block them. They tried to locate in Nashua, somehow Nashua convinced them that that wasn't a good match for the City of Nashua. Goffstown has now successfully blocked it.

Mayor Guinta interjected I think the answer is simple. I think the answer is that we're the largest City in the state, we provide the most services, therefore, these non-profits that operate halfway houses are really looking for Manchester. They were looking in Manchester first before any other location. As you remember the proposal calls for Hillsborough County, they have looked in Nashua before for whatever reason they do keep coming back to Manchester. I don't think it's about the opposition they received from any one individual municipality as much as we provide the most services in the State of New Hampshire...that draws and attracts these non-profits to the City.

Alderman DeVries stated your Honor I agree with you and I probably get most frustrated by the Nashua ability to block it because they have the infrastructure, they have the transit system, they have more jobs available than we would have for individuals coming back into the community. I think the point is and I agree with everything that Alderman O'Neil was saying I think this is very misleading to our citizens because I don't know that every citizens realizes that we have taken the unanimous vote, that we have gone to court to try to block this as a City, that we've expended every effort we had available to us and your Honor I thank you for that and my fellow Board members for their prior votes to allow that to happen...it's misleading. But maybe it's one more tool that we will have the next time somebody is trying to place something. I don't know what else we can do as a City to try to say help us just by spreading the load out among some of our other communities in the state because our taxpayers in Manchester have picked up more than their fair share. It's not that it couldn't be used...absolutely it would be a good asset to the prison system we just need some help sharing the load. Thank you.

Mayor Guinta stated I did say we'd take a vote so real quickly because I know you haven't spoken on the issue...Alderman Long and then we'll end with the sponsor of the request and then we've got to take a vote.

Alderman Long stated on the court ruling...the latest court ruling...one of the facts was that they're claiming that we have a lot of arrests here for federal prisons and I'm wondering if in litigation did we have those numbers or did we bring up those numbers that whatever arrests we're having here we're getting them back and putting in our state halfway houses or what have you because that was one of the facts of the ruling, that's how they ruled the way they did.

Mayor Guinta stated yes but there's no requirement that a federal halfway house has to go to Manchester. Let's be honest...Portland, Maine and Boston, Massachusetts federal halfway houses are at capacity. For whatever reason the federal government decided that Hillsborough County, being the largest county, probably having the county with the most services was the area for which they chose the RFP. It doesn't exclude these federal halfway houses from going anywhere else in New England. So the point that I think we probably all share is not so much our reentry program's inappropriate but why is it that Manchester continues to be the primary location and I think we probably have general agreement on that principle. Alderman Osborne a final comment and then we'll take a vote.

Alderman Osborne stated again I know we have no power and it's going to be going to the courts like your said right.

Mayor Guinta stated I have stated that I disagree with the Superior Court's opinion and I've stated that yes we are going to be appealing it back to the Supreme Court. I certainly hope that we'll be successful. Again my issue...one of my issues is that Manchester is doing more than its fair share, there needs to certainly be a broader perspective looked at in the criminals that are being released and it's more than just where or the reentry programs. I think it's got to be expanded beyond are they serving full sentences and there's a lot that goes into it beyond simply just reentry programs.

Alderman Osborne stated I think us as Aldermen...all the year's I've been an Alderman anybody that wanted any type of a referendum question out there for the people I had no problem with it. I wasn't here to decide whether it's right or it's wrong or anything else. I think it's only a non-binding referendum question, it gives a person a chance out there and I don't think any Alderman should not let their own constituents go out there and vote for something like this. I just can't see it myself it just doesn't make sense to me. Thank you.

Mayor Guinta stated there's a motion on the floor to place the non-binding referendum question on the ballot.

Roll call voted was taken. Aldermen Osborne, Pinard, Lopez, Shea, DeVries, Garrity, Roy and Duval voted yea. Alderman O'Neil, Smith, Thibault, Forest, Gatsas and Long voted nay. The motion carried.

- 15.** Communication from Michael Ludwell, Superintendent of Schools, advising advising that due to a School District Finance Committee meeting he and Ms. DeFrancis will not be available to discuss the matter relating to the School District's Health Insurance.

Mayor Guinta stated make the request for the next meeting.

Alderman Gatsas stated I think that would be appropriate, your Honor.

Alderman Gatsas moved to request they meet with the Board at the next regularly scheduled meeting. Alderman Pinard duly seconded the motion.

Alderman Lopez stated if it's to be referred to the next meeting can you at least put it in writing to have some type of communication.

Mayor Guinta stated they did put it in writing.

Alderman Lopez stated about going out to bid and all of that.

Mayor Guinta stated no about their specific plan...oh, okay, I apologize.

Alderman Lopez stated maybe they could put it in writing.

Mayor Guinta stated you know what we'll do is we'll send a request that they come before the November meeting if they cannot make it we will have...no November, I'm sorry October. We get something in writing confirming that they plan on doing this and in what timeframe.

Alderman Smith asked couldn't we have a meeting that scheduled different from the School Board meeting and have them appear. We're going to be having two meetings the first and third Tuesday's of the month and just have them come when one is available. I'd rather see them and what they're actually doing because I've heard some bad results from CIGNA and I'm going to bring it up tonight.

Mayor Guinta called for a vote on the motion. There being none opposed, the motion carried.

**16. Communication from Virginia Lamberton, Human Resources Director, relating to the City's health insurance coverage through CIGNA.**

Alderman O'Neil moved for discussion. Alderman Smith duly seconded the motion. There being none opposed, the motion carried.

Alderman O'Neil stated your Honor there's a letter that hopefully the Clerk has passed out to everyone and I won't repeat it...hopefully you all had a chance to look at it but I just want to review it very quickly and hopefully we won't spend a lot of time on this tonight although it is a very important issue. I believe there's problems with the CIGNA plan and I'm just going to share some basics. There's at least one health care provider that I'm aware of that have served many City employees...has issues regarding services that were previously covered by Anthem. To me that's a change in the plan. The prescription plan for both our

current employees and retirees. There have been numerous issues with co-pays and there have been issues with drugs that were previously covered by Anthem that are no longer covered by CIGNA...I think that's significant. I'm aware of at least a couple of situations of coverage for special health care services for children of our employees that again previously covered by Anthem now all of a sudden they're not covered by CIGNA...very, very significant. On a not as serious an issue we were told that whatever Anthem previously covered for health club reimbursement there was a \$200 reimbursement I am told by a police officer that the health club he belongs to is not covered...that's a change and I'm also aware through employees...a couple of employees regarding physical therapy services previously covered by Anthem not covered by CIGNA. To me those are changes in the system. If that's how CIGNA got to their savings we should have been told that up front and I almost feel misled about this and using an old fire adage..."where there's smoke there's fire". And there's a lot of smoke right now with this...that's why I asked CIGNA to be here. This is not about HR or Ms. Lamberton for some reason she believes it's about her and she's the only one that can answer the questions. If she is we've got a pretty poor system then. I really wish CIGNA was here tonight. I think we owe it to our current employees, to our retirees and to the citizens of this City. This plan is not the same plan we had with CIGNA and someone has to be held accountable. I can only believe that's CIGNA. So what's going on currently is absolutely unacceptable to me...unacceptable. So, thank you, your Honor.

Mayor Guinta stated let me just give a couple of clarifying points because a lot of hands went up. Alderman O'Neil referenced a meeting that he and I and Ginny Lamberton were trying to have before this meeting...we weren't able to schedule in time for this meeting but I have and I know that Alderman O'Neil knows it extended the opportunity to do that when Ginny comes back from vacation. A couple of things we have done though at the suggestion of Alderman Lopez on September 12<sup>th</sup> CIGNA representative will be here in the City of Manchester all day to answer specific questions from employees and if an additional day or days are necessary for that to occur for any employee whether they're having questions, issues, denials that opportunity will be afforded them if they can't make the September 12<sup>th</sup> date. I think it's also important for, at some point, for CIGNA to...for some of these issues to be resolved because some of them...if Aldermen are hearing issues and concerns and they want to convey it because they are representing people they should do so, however, I think there probably needs to be some additional clarification provided to employees and I would still encourage employees certainly to talk to your Aldermen but convey the issues and concerns to either the HR Department or CIGNA themselves.

Alderman O'Neil interjected may I follow up on one point your Honor.

Mayor Guinta stated sure.

Alderman O'Neil stated Alderman Long shared this with me because I believe you have CIGNA under a different I don't know if it's a third party administrator...they have a specific one person to contact...am I correct, Alderman Long.

Alderman Long replied correct.

Alderman O'Neil stated one person who represents the organization that Alderman Long belongs to...not an 800 number and get whoever you get there...they have one person. If that exists in the City of Manchester I'm not aware of it and I'm not talking with HR I'm talking at CIGNA and I think we should be an important enough client of CIGNA that we know what that person's name is, what their direct line is and if there are concerns that's who the employees can call. To the best of my knowledge employees are calling this 800 number of whatever the number is and they're getting different interpretations from different representatives of CIGNA, health care providers are calling the same number getting different interpretations, we need one person that's a point of contact. It should not be a City staff person in my opinion. It should be someone from CIGNA that is the client service rep or whatever for our account and I think that's absolutely vital for this to be successful. Thank you, your Honor.

Alderman Duval stated a couple of things that strike me this evening. First the appropriateness of discussing these types of matters at the full Board meeting. It just strikes me as having been involved with HR some years back with Merchants Automotive Group out of Hooksett that when you go through a transition period transitioning from one carrier to the next or oftentimes bumps in the road or there are things to be worked out and we're here just probably a little over 60 days with the new provider and it seems to me that our efforts to make the process work and be a little bit smoother and resolve some of the questions that are legitimate although Alderman O'Neil but nonetheless could perhaps be more properly addressed through working with HR and employees of CIGNA I would think. Again it's only been 60 plus days. There was a considerable savings that came as a result of transitioning to CIGNA, it came after a long due diligence process for selecting a new provider in large part through the efforts of Alderman Gatsas here. The net savings I think, Alderman Gatsas, over a million dollars... \$1.4 million or something like that. I think we owe it to the patient and the cooperative and to allow some time here to address these concerns in a most constructive of manners and I think that has to be channeled through the HR Department, certainly through Virginia's hands, it's under her jurisdiction but more importantly allow the representatives from CIGNA to work with us in addressing some of these concerns directly with the employees. I think it's awfully premature for us to be making I think such critical overtures publicly towards a new provider and I don't know CIGNA from Adam to be honest with you I haven't had any past dealings with them but I think we're in a large part a self-funded program, these are dollars that we have to pay directly and if CIGNA is...I think we still have to allow them the opportunity to sort of make good on what they promised us for sure but we have to allow them some time to get this

thing on track if that's the case. I haven't received one phone, I don't know how many Aldermen have received phone calls and if there are any employees in my ward that have problems I encourage them to give me a call but as of yet I have not received any.

Alderman Osborne stated I can remember when we voted on this that we were told it would be exactly the same as Anthem, there wouldn't be any changes if not better and we got this from Ginny Lamberton and she swore by that also. So like Alderman Forest says we're probably jumping the gun here a little bit and I think we should see or when Ginny comes back and go through it there and she what she has to say about it because it's supposed to be the same. I haven't had any problems yet but I think you've got to give it a little bit of chance like Alderman Forest saying I think we're trying to jump them too quickly.

Alderman Roy stated I am one of those Aldermen who have received phone calls regarding services and benefit differences and I'm somewhat willing to let this work itself out but one of the major problems I have is the fact if someone does have a problem with the resolution they have to call HR and we should not be asking City employees to call another City department to take care of medical issues whether it's about themselves or about a family member and it's reiterated in Ms. Lamberton's letter to us that she simply states "I would also ask that if any employee or retiree contacts you with questions or concerns regarding benefits and refer that person to this office for resolution and that violates so many privacy laws. We should not be having City employees call another City department. I would like to see CIGNA realize that there are problems with this, realize that even if it's just confusion and it is part of that transition problem which I don't believe it is I believe there are dramatic differences that they assign a person and a phone number so that people are not dealing with other City departments and other City employees and violating families privacy.

Alderman Long stated I believe the problem is a communication problem with CIGNA. The bottom line it's an ASO contract...administrative services only...meaning we're still the self-insurer, they're just administering our insurance and they agreed to mirror Anthem so the City obviously gave them a policy with a summary plan description and they're going to mirror that plan. So what I think it is as with the Ironworker's did the exact same thing and saved substantial amount of money. And it took a while to get the kinks out. There were some drugs that weren't covered others were but the bottom line is the self-insured tells CIGNA that yes those are covered and CIGNA will cover them. So that seems to be the communication and as far as who oversees for the City, is it HR that oversees for the City the claims.

Mayor Guinta replied yes.

Alderman Long stated so they already know the medical history of our employees I'm guessing because they're looking over claims.

Mayor Guinta stated there are HIPPA laws that do not allow...you can't just look at someone's medical file they have oversight over the program but you're not having some employee in HR being aware of our employees medical history.

Alderman Long stated HR doesn't authorize the claims...look at the claims and say employee "A"...so CIGNA does that alone so then I would have to agree with Alderman Roy that that would be HIPPA violation. If I needed to call HR and say they were covering my blood checks for diabetes because they're not privy to that information...that's my medical history and that's why I would call HR to do that.

Mayor Guinta stated I don't disagree with what you're saying which is why the first step that we've initiated is having CIGNA come, a representative will be coming to the City of Manchester on the twelfth, they've agreed to do that, they'll do that on more than one occasion. I don't disagree that this idea of having a specific rep is a bad one. We do need to just talk that out. So we were trying to get a meeting prior to this meeting, it just couldn't be done due to scheduling issues for myself, for Ginny...so we'll still get that meeting accomplished and we can talk about that specific change, however, in the meantime we wanted to try to provide good service to employees and the first of at least one if not more dates for a CIGNA rep to be here is for the twelfth. So that person can specifically talk to any employee, will be able to talk to a CIGNA representative to try to iron out the specific medical issues that people have.

Alderman Forest stated I agree with Alderman Duval that 60 days on a trial period or whatever the period doesn't iron out all of the problems. One of the phone calls that I got is from a friend in Arizona who is a retired policeman and has been retired 25 years...he's on a fixed income. Well CIGNA was not supposed to change anything but in his case it did, it's costing him \$18/month more for CIGNA for him and his wife, he was sent a list of doctors not around Arizona, he's got problems with kidneys, he's got a heart problem, he's got diabetes, he sees doctor's on a monthly basis and they increased his co-pay. I've referred him to HR...Ginny referred me to somebody else who's supposed to contact him. Well, most of the time she doesn't call back...I call back...he still hasn't got his answers...he's had this program 60 days now and everything has increased and it wasn't supposed to change...it's a disaster for this man and I've been trying to get answers and I have not been. She says I'm going to call him and she does not.

Mayor Guinta stated if you need assistance with HR or someone from CIGNA calling him just let me know after the meeting and I'd be happy to make sure that happens.

Alderman Smith stated I did receive several calls maybe because my name is Smith...it's easy to pronounce but anyway I definitely thing it's communication but you're saying September 12<sup>th</sup>....what time, where will the City employees be able to visit them...on City time or would it be a night so we can get this resolved.



Mayor Guinta replied I believe that communication is going to be sent out by the HR Department but I believe it's going to be all day and I think there's evening hours as well...that hasn't been communicated yet...that's going to be communicated I want to say by the end of this week.

Alderman Smith asked will it be sent to the department heads and union officials or how would it be worded?

Mayor Guinta replied every single employee will receive a communication, every single employee.

Alderman DeVries stated you've heard it before and certainly in my family we experienced it firsthand...the policy was not seamless, what was covered under one day by Anthem was not covered the next day by CIGNA. The biggest thing that I would like to see the City do today, tomorrow...obviously not today...nine-thirty at night...tomorrow is to send out a corrected piece from HR to our City employees to change the reporting from HR back to CIGNA...we are libel for a lawsuit, people should not feel they have to give out personal, privileged information to any City employee. Alderman Roy said it we cannot say it solidly enough. I've already heard one individual complaining that his medical information has become part of a rumor mill among City employees. We are going to get ourselves sued if we do not change this reporting back to our HR employees...it puts them in a very uncomfortable situation...we need to change that before the twelfth...as soon as you know your timeframe you have to send out a notice anyway and we've got to do something about all of our retirees and our employees that cannot take time off or our family members of employees that cannot be there on the twelfth...you've got to take them into account. So, your Honor, please give that attention.

Alderman Shea stated I had to have an operation in July and I changed from Anthem to CIGNA and I had no problem, I had the same kind of services...there was no problem with any kind of medication of any sort. All I did was present my new CIGNA card to the person involved so that basically there was no disruption. It was just as if it were the way it was supposed to be. So I say that the services are exactly the same as they were...fine medical attention and so forth so to me unless there have been deviations from the previous program that were covered but were not supposed to be covered and again I'm not saying that that's the case but obviously when we adopted this program it said that they would have the same benefits. Now the gentleman out in Arizona apparently there's probably some kind of a situation there that's unfavorable and should be corrected.

Mayor Guinta stated it hasn't gone as smoothly as it should be so we want to make sure that every employee receives proper notification and communication from the employer which is the City of Manchester because you are right we have stated to employees in the past and

each of them had an opportunity to meet with HR and CIGNA that the benefits would not change. So if there are reports that that is occurring that does need to at least be conveyed to the employer...us...so we can correct it but it also does need to be conveyed to CIGNA.

Alderman Shea stated I add that in walking the ward I came upon one constituent who had had a problem and the person's caretaker indicated to me that there was a concern that they had and I explained to them that they were to contact the Human Resources Department, I called back the next day and they said everything had been resolved favorably. But I know that there might be as Alderman O'Neil who's raising his hand like the child in school that keeps asking questions which are good...but the point is that no everyone is going to be totally settled within the first few months of a particular program.

Mayor Guinta asked Alderman Lopez did you have anything you wanted to say?

Alderman Lopez replied just a final comment...I think everybody has said everything that they wanted to say and I think it's important to mention that if there's any City employee that has a problem they call the responsible people...in this particular case until it's changed it's HR. If they're not getting the service, not getting the answers I'm sure they're going to call the Alderman and the Alderman can go down and get the answers. Now I'm not saying that that's the best solution in the world but we do have people that are responsible...I don't want to know people's medical problems...it's not my business because the slip of the tongue sometimes like one of the Alderman says rumors start going around. I'd rather they deal with the responsible in HR and CIGNA and on the twelfth...I encourage each Alderman to stop in and talk to CIGNA and bring those problems that you do have because I think that will solve a lot of communication problems along the line, thank you.

Mayor Guinta stated we do have to finish up here...Alderman Gatsas has not spoken and then Alderman O'Neil and then we've got to move on.

Alderman Gatsas stated when I heard about these problems and certainly there should be a problem with any one employee...every employee should be catered to as an employee of the City of Manchester I talked to Ginny and she told me there were roughly 20 to 30 complaints and that they'd all been resolved. I think everybody on this Board should understand one thing...it has nothing to do with CIGNA, has nothing to do with Anthem...it's a name on a card...we pay the bill. It's very clear that any procedure that was carried by Anthem is carried by CIGNA. So if there's a communication somewhere I've not got a call. So I certainly...somebody that returns all phone calls...so any of those employees that have contacted Aldermen I would hope that those are the employees that live in your ward but nobody in Ward 2's called me and I know that there's an awful lot of City employees out and for any employee that needs to call me my number is 668-1233...pretty easy number to remember. So certainly they need to get rectified and there's no question it's very clear that the policy we have in place was a hold harmless...it was supposed to be no

change from anything that Anthem offered. Now that's clear, that's in the contract and if Aldermen are having problems I certainly don't have a problem, I don't want to know the history. I just want the employee taken care of and I know that Ginny understands HIPPA laws very clearly it's not like she's just been around this Human Resource Department for one day so I'm sure she knows how to clear up employee's problems. So with that I know she'll be back and I'm sure if any Aldermen have called her...I called her and she said that the problem's had been resolved and for claims to be in a pipeline it usually takes 90 days...we're into this program for 60. So if people are saying their claims aren't getting paid it usually takes 90 days for them to get them into the cycle. So with that I know that the program is absolutely exactly the same as Anthem's...no different because we pay the bill.

Mayor Guinta stated final point Alderman O'Neil and then you need to decide what kind of motion you'd like.

Alderman O'Neil stated thank your, your Honor. I do respect my colleagues that have said there is going to be some transitional problems or bumps in the road but if you're the employee affected by it and you're now having to pay the full amount for a prescription that was previously covered...that's a serious issue and that can't wait 90 days to figure out, that's a serious issue today whether it's a current, an active employee or a retiree. When you're an employee who has children with special needs and they previously were being able to be treated weekly and now that can't happen because CIGNA's not paying it that can't wait 90 days. I think we need to, your Honor, as soon as possible...HR does not belong in the middle of this that's part of the problem. Many of the employees don't trust HR. We need one person from CIGNA who is the point of contact that any employee can call, that any elected official can call if there's a problem. I don't know who that is. If somebody can share with me tonight I'll gladly speak with that person tomorrow. Can anybody here tell me who are point of contact at CIGNA is?

Alderman Gatsas stated I think, your Honor, if Ginny Lamberton were here tonight she'd be able to give you the name and number.

Alderman O'Neil stated I'll tell you there was about 12 e-mails back and forth and she still hasn't provided it to me. So there are problems, we've got to stop pretending that there are problems and if it affected...I'm very happy that Alderman Shea was taken care. I know somebody that called me that had surgery and the prescription required...recently was in the hospital multiple days...prescription required was not covered by CIGNA. So God bless you, Bill, that you were covered not every employee has been taken care of. There's a problem, we can't chalk this up to transitional problems...there's a problem, it needs to be addressed, who is that contact person at CIGNA...that's what I want to know...no one can answer it tonight. Thank you, your Honor.

Mayor Guinta asked what do you want to do with item 16?

Alderman O'Neil moved to receive and file. The message has been sent but there'd better be some resolve here and not the bull that's been going on. Alderman Duval duly seconded the motion. There being none opposed, the motion carried.

Mayor Guinta stated I'm going to jump down to item 20 if you don't mind so a person in the audience can go home.

- 20.** Communication from Walter Drewniak requesting the City grant an easement for a driveway crossing property located at 526 Douglas Street.

Alderman Thibault moved to grant the easement, subject to the review and approval of the City Solicitor. Alderman Smith duly seconded the motion. There being none opposed, the motion carried.

- 17.** Communication from Leo Bernier, City Clerk, requesting the Board set the polling hours for the Municipal General Election scheduled for Tuesday, November 6, 2007 from 6:00 AM until 7:00 PM.

Alderman Osborne moved to set the polling hours for the Municipal General Election as requested. Alderman Shea duly seconded the motion. There being none opposed, the motion carried.

- 18.** Communication from Carol Johnson, Deputy City Clerk, submitting on behalf of Chief Jaskolka, a return of Warrant for Non-Renewal of Dog License pursuant to RSA 466:16.

Alderman DeVries moved to accept the warrant for non-renewal of dog licenses pursuant to RSA 466:16. Alderman Shea duly seconded the motion. There being none opposed, the motion carried.

- 19.** Lease between MB3 Realty, LLC and the City of Manchester for space at 165 Kelley Street to be used as a Police substation; same to include payment of \$833.33 per month for a three-year term totaling \$30,000. in payments.

Alderman Forest moved to approve the lease and authorize the Mayor to execute same, subject to the review and approval of the City Solicitor. Alderman Thibault duly seconded the motion.

Alderman O'Neil stated without getting the Chief up here I hope we get better use out of this substation that we have on the one on Maple Street. We spent some resources, I very rarely see a police officer there and I very rarely see the lights on with volunteers. So I hope this actually gets used.

Mayor Guinta stated on that comment we'll get a report to the BMA on the use of all of the substations because I've heard...you're not the only person who's made that...who's expressed that concern and I think they're getting used a lot more than we think they are.

Alderman O'Neil stated they shouldn't be exclusive to manning with volunteers...police officers should be in there as well.

Mayor Guinta stated just so you know this \$30,000 is not being borne by the taxpayers...CMC has stepped up a second and third time for years two and three. So if you remember originally they said \$10,000...they're going to do \$10,000/year for three years. And, it is almost ready and it looks great.

Alderman Shea stated I know there's been discussions concerning some stations but I think it behooves the City to investigate the desirability of a precinct on the west side. I really think that there should be some forethought given to that because we are spending regardless of where the money is coming from and generously it's coming from a non-profit but that's \$30,000 and I really believe...we had a substation on Wilson Street and the same thing happened that is happening in other places. Initially there was a lot enthusiasm, there were volunteers, police would stop and obviously as time went on it just seemed less and less use was made of it until finally they began to think about integrating that with the one on Maple Street and I think there should be some thought to a permanent structure that obviously there would be police presence at all time required as it were.

Alderman Lopez stated the rent is donated by CMC is that correct.

Mayor Guinta stated yes.

Alderman Lopez asked how about the operating costs...does anybody know what the operations costs are going to be?

Mayor Guinta replied there were some costs...technology costs that were paid for by the City...I thought it was less than ten.

Alderman Lopez stated in the agreement whatever they do in there is our costs correct...putting up walls or communications and cleaning the place and all of that is borne by the City not by the donation of CMC.

Mayor Guinta stated not putting up walls...cleaning and that sort of thing...

Alderman Lopez stated air conditioning/heating.

Mayor Guinta stated I don't know...do you know if it's a triple net lease?

City Solicitor Clark stated there will be some utility costs which will be borne by the Police Department...they'll also be cleaning/janitorial costs. What the Police Department will do is send their janitors over to clean the place.

Alderman Lopez stated I sort of think that maybe and we're going to get the report on the substations but maybe it's time we really look at a precinct over there.

Mayor Guinta called for a vote on the motion. There being none opposed, the motion carried.

**21. Resolution:**

“Amending the FY2006 & FY2008 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Twenty Thousand Dollars (\$20,000) for the FY2006 CIP 310306 MCRC Basement Retrofitting Project.”

On motion of Alderman Osborne, duly seconded by Alderman O'Neil, it was voted that the Resolution be read by title only, and it was so done.

Alderman Shea moved that the Resolution pass and be enrolled. Alderman Pinard duly seconded the motion. There being none opposed, the motion carried.

**TABLED ITEMS**

**22. Report of the Committee on Bills on Second Reading recommending that Ordinance:**

“Amending the Zoning Ordinance of the City of Manchester by extending the B-2 (General Business) zoning district to include property currently zoned IND (Industrial) located on the south side of Gold Street east of the former Lawrence Branch of the B&M Railroad and including the following three lots Tax Map 875-14, 875-15, 875-16.”

ought to pass.

*(Aldermen Duval, Lopez, Garrity and Pinard recorded in favor; Alderman Gatsas opposed.)  
(Tabled 09/05/2006)*

This item remained tabled.

**23. Report of the Committee on Bills on Second Reading recommending that Ordinance:**

“Amending the Zoning Ordinance of the City of Manchester by extending the R-3 (Urban Multi-family) zoning district to include property currently zoned R-1B (Single-family) located on a portion of Tax Map 691 Lot 143-1 that will be on the north side of a proposed Gold Street Bypass and adjacent to Bradley Street and the New St. Augustin's Cemetery.”

ought to pass.

*(Aldermen Duval, Lopez, Garrity and Pinard recorded in favor; Alderman Gatsas opposed.)  
(Tabled 09/05/2006)*

This item remained tabled.

- 24.** Report of the Committee on Community Improvement advising that it has requested staff to prepare documents to provide that the City agree to extend the term on the 2<sup>nd</sup> mortgage relating to Lowell Terrace Associates property located at the northwest corner of Lowell and Chestnut Streets to coincide with the expiration of the existing first mortgage in 2013.

*(Unanimous vote)*

*(Tabled 05/15/2007. Additional materials provided by Finance enclosed.)*

This item remained tabled.

- 25.** A Majority report of the Committee on Bills on Second Reading recommending that Ordinance:

“Amending the Zoning Ordinance of the City of Manchester by extending the General Business District (B-2) into an area currently zoned Residential One Family District (R-1B), being a portion of Tax Map 381, Lot 47 with an address of 466 South Willow Street and abutting South Lincoln, South Willow and Parkview Streets. A majority of the property is currently zoned B-2 and the petition would extend the B-2 to include the entire lot.”

be denied at this time.

The Committee notes that the business owner should work with the neighborhood and may return with a petition after addressing issue as noted in a communication from Alderman Garrity enclosed herein.

*(Aldermen Garrity, Pinard and Duval in favor. Aldermen Lopez and Gatsas opposed.)*

*(Tabled 06/05/2007)*

A Minority report of the Committee on Bills on Second Reading recommending that Ordinance:

“Amending the Zoning Ordinance of the City of Manchester by extending the General Business District (B-2) into an area currently zoned Residential One Family District (R-1B), being a portion of Tax Map 381, Lot 47 with an address of 466 South Willow Street and abutting South Lincoln, South Willow and Parkview Streets. A majority of the property is currently zoned B-2 and the petition would extend the B-2 to include the entire lot.”

ought to pass.

The minority advises that the proposed zoning, in its opinion, is consistent with the highest and best use of the property and that neighborhood concerns can be best addressed through the development process at the Planning Board level, therefore, that such rezoning should be considered subject to the Planning Board approving any plans for development of the property.

*S/Alderman Lopez*

*(Tabled 06/05/2007)*

*(Note: additional communications from Alderman Garrity and petitions enclosed.)*

This item remained tabled.

## **26. NEW BUSINESS**

Alderman Lopez stated I'd like to inform the Board that I am appointing a Special Committee for the Selection of the City Clerk position, which is an Officer of the City. I, myself, will Chair...Alderman Smith, Alderman Roy, Alderman Garrity and Alderman Shea will sit on the Selection Committee.

Alderman Gatsas asked Alderman Lopez is there a reason why we wouldn't to wait until the next Board comes in because there could be changes and shouldn't we wait until we give those colleagues an opportunity.

Alderman Lopez stated the letter has been submitted that Leo Bernier will be leaving us the 31<sup>st</sup> of December.

Alderman Gatsas stated and a new Board comes into play within five days of that.

Alderman Lopez stated that's correct and as you are well aware of as we went through the other selection it takes times to go through the applications and everything and I feel it's this Board's responsibility.

Mayor Guinta stated I thought he was leaving January 31<sup>st</sup>.

Alderman Lopez stated he submitted another letter.

Mayor Guinta stated he submitted dated August 31<sup>st</sup> that is being handed out to you now.

Alderman Lopez stated I thought that was sent over to you.

Mayor Guinta stated his retirement paperwork will become effective December 31, 2007.

Alderman Gatsas asked so is it your intent to find a Clerk between November 6<sup>th</sup> and December 31<sup>st</sup>?

Alderman Lopez replied I'll put it this way that going through the process and selection whatever number of people have submitted their applications and sitting down with the committee and going through the rules of the committee I would say probably October/November we will probably have a selection back to the full Board to be effective December 31<sup>st</sup>.

Petition for the Discontinuance of Knox Street, Clay Street, Webster Street, Jefferson Street, Vernon Street and a 20' Passageway submitted by the City Solicitor's office.

Alderman O'Neil moved to refer to a road hearing on a date to be set by the City Clerk.

Alderman Long duly seconded the motion.

Alderman Gatsas asked why are we discontinuing streets when we don't even know if we have a deal?



City Solicitor Clark replied I know Mr. Arnold's worked on it but I can probably give you a quick explanation. There is a due diligence period going on right now. One of the items that they've cited as a potential title defect is the existence of paper streets within the project. They have asked the City go through a discontinuance process to eliminate those paper streets to clear up that title problem.

Alderman Gatsas stated wasn't it the obligation of this Board to present clear title anyway.

City Solicitor Clark stated yes it is and they've decided that that's a title defect and they've asked us to correct it.

Alderman Gatsas asked are we ready to pass title?

City Solicitor Clark replied no they're still in the due diligence process.

Alderman Gatsas asked so why wouldn't we wait until we're ready to pass title?

City Solicitor Clark replied you won't have time to get the road hearing done and get the...

Alderman Gatsas interjected oh that's right we have to go out and view this.

City Solicitor Clark stated you have to view it by statute. And, then there's an appeal process afterwards that the applicant or the purchaser will have to deal with.

Alderman Gatsas stated but we can put it in with the caveat that we can do the discontinuance and if the deal doesn't revert then we can not do it.

City Solicitor Clark stated the preferred method is to act on it. If the Board would wish to take a different action we could talk to the applicant to see if that's...

Alderman Gatsas interjected could somebody explain to me how we took title of this defective title?

City Solicitor Clark stated they're paper streets...they're potential defects...they were never built.

Mayor Guinta called for a vote on the motion. There being none opposed, the motion carried.

Alderman Roy stated we were handed out this evening Police priorities and one of those items I just wanted to make sure it got to CIP regarding radios. I believe at one of our meetings it was destined for your committee, Chairman Garrity.

Alderman Garrity stated we have a meeting scheduled September 25<sup>th</sup> I believe.

There being no further business to come before the Board, on motion of Alderman Pinard, duly seconded by Alderman O’Neil, it was voted to adjourn.

A True Record. Attest.

City Clerk